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reason for that, sir? A. Yes, sir. For the years 1931 the original return was listed under the name of Loretta B. Costello only. However, upon examining certified copies of the return it was filed as a joint return; therefore I have made such a change on the records and credited the joint (753) account with the payments.

Q. When you refer to 1931, Mr. Murphey, I believe that the payment of $749.23 is credited to the account for 1932. What is the reason for that change? A. Oh, the $749.23, sir, on the original schedule is marked for the year 1931.

Q. Would you look at the other payment, sir, $250.77 on the same— A. Oh, I see. I am sorry. The 1932 return was filed also under the name only of Loretta B. Costello. However, upon examining the certified copy of the return I find that it was a joint return. And I have made that change on the records also.

Q. Referring to Government's Exhibit 24, Mr. Murphey, there is no record of a payment of January 6, 1944. I notice on the new schedule there is a record of such payment. Would you please tell us the reason for that? A. Yes, sir, for the tax account for the year 1932, which is on the original assessment sheet that I submitted in evidence, the notation on the account, I had failed to notice it when I was making up the original schedule; and it does state on the assessment sheet in a notation that the amount of $426.36 was collected for 1932 as additional tax should be credited to Loretta (754) and Frank Costello jointly. I have made such a change on the record.

Q. Look at the next entry, January 8, 1944, payment in the amount of $586.10. On Government's Exhibit 24 that is credited to the account of Loretta B. Costello. On the new schedule it has been credited to the joint account. Would you tell us the reason for that, sir? A. Yes, sir. Again for the year 1932 the payment of $586.10 on the original assessment was listed under the name of Loretta

B. Costello individually. However, upon examining the certified copies of the 1932 return, I find it was filed jointly.

Mr. Fennelly: I object to the witness testifying about certified copies of returns unless they are produced here.

The Court: You may examine. Go ahead.

Q. Mr. Murphey, under date of April 6, 1944, under Government's Exhibit 24, the year of tax liability referred to is 1938 but I notice on the new schedule it reads 1928. What is the reason for that change? A. That is a typographical error, sir.

Q. Under date of January 31, 1946, on Exhibit 24, there is a payment in the amount of $2,260 credited to the account of Frank Costello. On the new schedule it (755) is credited to the account of Loretta B. Costello. Would you tell us the reason for that? A. I found that to be a typographical error also. It should be Loretta B. Costello.

Q. Finally, under date of February 21, 1947, one of the payments there listed on Exhibit 24 is alongside of the date 1930. On your new schedule the notation reads "1926 through 1930." A. I found that that interest payment of $12,804.21, which was credited under the joint account to Frank and Loretta Costello, was actually a payment of interest for four years, 1926 through 1930. I had listed it as 1930. It should be for the four years. They put it all in one account.

Q. Now, sir, apart from those modifications, does the new schedule, Government's Exhibit 212 for identification incorporate now every day of payment made in your district from October 18, 1937 through December 31, 1949 showing the year of the tax liability, the total amount of the payment, the account to which it is credited, whether Frank Costello, Loretta B. Costello or the joint account of

Frank and Loretta B. Costello, broken down in turn to show whether the payment is for tax, for penalty or for interest? A. Yes, sir, it does show that.

(756) Mr. Seymour: I offer Government's Exhibit 212 for identification in evidence, your Honor.

Mr. Fennelly: No objection.

(Government's Exhibit 212 for identification received in evidence.)

Mr. Seymour: At this time the Government respectfully asks leave to withdraw Exhibit 24, of which this is now a supplemented and modified copy.

The Court: Do you have any views on that, Mr. Fennelly?

Mr. Fennelly: I would think it ought to remain in for the time being. I think there may be some use I may wish to make of it.

The Court: I will reserve decision, and you may move to do that before you close.

Mr. Seymour: Very good, your Honor.

Q. Mr. Murphey, also when you were here last time you were asked, in connection with your testimony about the returns filed by Frank Costello and Loretta B. Costello during the period 1937 through 1946, whether you had made an examination—you were asked whether you would make an examination of the records on file in your office to determine whether any returns had been filed by either of those taxpayers for years earlier than 1937, were you not? A. Yes, sir, I was.

(757) Q. Now, sir, have you examined the records of your office to determine what returns, if any, were filed in the years prior to 1937? A. Yes, sir, I have.

William N. Murphey—for Government—Recalled—Cross

Q. How far back has your search gone? A. I have gone back to the date the district was organized, April 1923.

Q. Have you prepared a schedule, Mr. Murphey, listing all the returns that were filed in that period? A. Yes, sir, I have.

Q. Do you have that schedule with you? A. Yes, sir, I do.

Q. You were also asked, Mr. Murphey, to check the records of your office to locate the posting documents for the three payments credited on the date of February 1, 1947, is that correct? A. That is right, sir.

Q. As I recall, that request was made in connection with Defendant's Exhibit C, concerning the lifting of a tax lien in connection with 1937 taxes, is that correct? A. That is right.

Q. Have you made a search of the records of your office, sir? A. Yes, sir, I have.

Q. Have you located copies of those posting documents? A. I have, yes, sir.

(758) Q. Do you have them with you? A. I have them with me.

Mr. Seymour: You may inquire, Mr. Fennelly.

Cross Examination by Mr. Fennelly:

Q. Mr. Murphey, you have testified in that in making certain changes on this new schedule, Exhibit 212, that you examined certified copies of tax returns of the Costellos for the years 1931 and 1932? A. Yes, sir, that is right.

Q. Have you got those certified copies of returns with you? A. The U. S. Attorney has them.

Mr. Fennelly: May I have them, please?

(Mr. Seymour hands papers to Mr. Fennelly.)

Mr. Fennelly: Mark that for identification.

(Marked Defendant's Exhibit EE for identification.)

Q. And the return for 1931 is a return for Loretta Costello individually, is it not? A. The return, sir, is under the name of Loretta B. Costello—

Mr. Seymour: If your Honor please, I submit that before the contents of the document are gone into, it should be received in evidence.

The Court: I think that is correct. I will sustain it.

Q. Now, didn't you find in your examination—

(759) The Court: Just a minute, though. Didn't he testify that he made a correction on 212 in either giving a credit or a debit to the account of Loretta Costello on the basis of something that he found in the return, which is this return?

Mr. Seymour: Yes, your Honor.

The Court: I will overrule the objection. You may proceed.

Mr. Fennelly: Would you repeat the question of before?

(Record read.)

Mr. Fennelly: And would you mark that, please?

(Marked Defendant's Exhibit FF for identification.)

Q. And the same is true for the year 1932, is it not, Defendant's Exhibit FF? A. The return is under the name of

Loretta B. Costello, 241 Central Park West, New York, New York.

Mr. Fennelly: Could I have Exhibit 24, please?

Mr. Seymour: I think the witness has it.

The Witness: I have got it.

Mr. Seymour: The witness has it.

The Witness: I have it here.

Mr. Fennelly: What is the number of your assessment list?

Mr. Seymour: 20 for identification.

(760) Mr. Fennelly: Could I have that?

(Mr. Seymour hands paper to Mr. Fennelly.)

Q. I show you Government's Exhibit 20 for identification, and are there any withholding taxes recorded on that assessment list? A. No, sir. No.

Q. On Government's Exhibit 24, which is the schedule I understood you prepared from your assessment sheet, Exhibit 20 —

The Court: 20 for identification, I think. That is not marked.

Q. —20 for identification, I notice that you have on your schedule some withholding taxes? A. That is right.

Q. I refer to the years 1945, 1946, 1947, 1948 and 1949. So, as a matter of fact, that information did not come from your assessment list, Exhibit 20, as you testified, did it? A. Yes, it did.

Mr. Seymour: I submit counsel is arguing with the witness. My recollection of the testimony on the day 24 was introduced was that the witness did state that he based it both on the returns and on the

assessment list. So he couldn't make withholding taxes—

The Court: Are you objecting?

Mr. Seymour: Yes, I am.

The Court: Overruled.

(761) Q. Very simply, sir, the figures of withholding tax that you put into your schedule did not come from your assessment list, Government's Exhibit 20 for identification, did they? A. No, sir, they couldn't.

Q. And the withholding tax is paid by a corporation, is it not, and not by either Mr. Costello or Mrs. Costello individually? A. That is right, sir. It is paid by the withholding agent to the Government for the taxpayer.

Q. And the taxpayer, Mr. or Mrs. Costello, would never have had the money, would they, it would be paid directly by the corporation to the Government? A. It is withheld at the source, that is right.

Q. Now, under date of April 6, 1944 there is an item on your schedule, Exhibit 24, of $493.82. A. Yes, sir.

Q. Which was credited, according to your schedule, to the year 1938? A. That is right, sir.

Q. Would you look on your assessment list and tell me whether or not that is an error? A. Yes, sir, it was; we just corrected that.

Q. You corrected that? A. That is right. It should be, if I recall, 1928.

Q. 1928 is the correct year, is that right? A. I would like to check it with my revised schedule if I may.

(762) The Court: By the revised schedule you mean 212?

The Witness: 212, sir, yes, sir.

Mr. Fennelly: 212.

A. $493.82 has been changed to 1928.

William N. Murphey—for Government—Recalled—Cross:

Q. Now, can you tell me in what other years besides 1931 and 1932, that is, prior to 1937, that you have tax returns in the name of Mrs. Loretta Costello individually? A. Prior to '37, sir?

Q. Yes. A. Just those two years, 1931 and 1932, sir. I have a schedule prepared for it. That is original tax returns we are talking about, sir.

Q. Now, would you look on your assessment list— A. Yes, sir.

Q. —Exhibit 20 for identification, and referring to the payment that was made to the Bureau of Internal Revenue on February 28, 1947, would you refer to that, please? A. It is on several accounts, sir, two or three accounts.

Q. Yes. A. Did you wish to take the interest in the amount of $12,000?

Q. No. What I want you to tell me, if it isn't a fact that on the day that payment was made February 20, 1947, that all of the tax liability due the Government as of that date had been discharged? Just look (763) at your record. A. For the years '26 through 1930, sir, the liability was discharged. I believe it was the only outstanding liability.

Q. I want you to look up on your record and tell me if it isn't a fact— A. The year 1926, there was no balance due as of that date, sir.

Q. I want you to look up all the years.

The Court: That is not the question, Mr. Murphey. Will you re-read the question, please?

(Record read.)

The Court: You mean all tax liability for any year at all up to this time; is that what you mean?

Mr. Fennelly: That is right.

A. I would have to go through each one of these sheets to pick out the years before that to see definitely.

The Court: All right.

A. May I have a pad, sir? May I ask for the other schedule to work with?

The Court: Yes, any paper that you need you may ask for.

The Witness: Mr. Seymour, may I have the work sheet to go with this, please? It will make it much faster.

(Mr. Seymour hands to witness.)

Mr. Seymour: If your Honor please I submit (764) that this long and complicated computation in fact is not relevant to the direct testimony of this witness, and unless there is closer specification in the question as to the purpose of the examiner I think that the net effect of it simply is to take an elaborate amount of time on a complicated calculation, and if it will be done in error it will be done under the pressure of doing it in the courtroom. I therefore respectfully object to the question.

The Court: Overruled.

The Witness: I am ready, your Honor.

The Court: Mr. Fennelly, the witness said he is ready with his answer.

Q. Yes, sir? A. It was paid up to that date, sir.

Q. Now, sir, you have told us that 1931 and 1932 there were individual tax returns in the name of Loretta Costello; and on this new revised schedule, Exhibit 212, you have credited the payments for years 1931 and '32 not on Loretta Costello but on a joint account; isn't that right? A. That is right, sir. The returns are under the name of Loretta Costello, but they are joint returns.

Q. Does this return say it is joint? A. Yes, sir, it does.

Q. Where? A. At the top of the return there are (765) four questions. One, "Are you a citizen or resident of the United States?" Mrs. Costello has answered, "Yes."

"If you filed a return for 1930 to what Collector's office was it sent?" It is blank.

Question No. 3, "Is this a joint return of husband and wife?" Mrs. Costello has answered, "Yes."

Q. And the same is true on Exhibit FF? A. Yes.

Question No. 3, "Is this a joint return of husband and wife?" And again the answer is "Yes."

Q. And who signed both of those returns? A. Loretta B. Costello, sir.

Mr. Fennelly: I offer them in evidence.

Mr. Seymour: No objection.

(Defendant's Exhibits EE and FF for identification received in evidence.)

Q. Now, I had understood from your testimony that all tax returns prior to 1940, wasn't it, had been destroyed, when you testified last time? A. That is right, sir.

Q. And did you find these returns in your office? A. The U. S. Attorney—

The Court: by "these returns" you mean EE and FF?

(766) The Witness: 1931, 1932.

Q. Exhibits EE and FF being the returns for 1931 and 1932. A. I found records of them having been filed, sir, in my index record.

Q. Well, you must have had an original to certify these, didn't you, to photostat it? A. That is right.

Mr. Seymour: If your Honor please, I submit that on the face of the certification itself it appears that these were certified in 1940. I object to it.

The Court: Sustained.

Q. Do you know where the originals are? A. Officially destroyed, sir, from any information I can get from Washington.

Mr. Fennelly, you have my folder.

Q. (Hands to witness.) A. Thank you, sir.

Mr. Fennelly: That is all.

Redirect Examination by Mr. Seymour:

Q. Mr. Murphey, you have a schedule, I believe you said, that you prepared showing the earlier returns filed? A. Yes, sir.

Q. May I have it, please? A. (Witness hands to Mr. Seymour.)

Mr. Seymour: Would you mark this for identification?

(Marked Government's Exhibit 213 for identification.)

(767) Q. You have examined, I believe you said, Mr. Murphey, the records in your office showing the filing of returns from 1923 through 1949? A. Yes, sir, I have.

Q. And you examined them to determine what returns were filed either by Frank Costello or Loretta B. Costello? A. Yes, sir, I have.

Q. Can you tell us, sir, the years in which you found the returns having been filed?

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Sustained.

Q. Can you tell us, sir, whether, as a result of that search, you found any other returns in the name of Loretta B. Costello from 1923 through 1937? A. I find no record of Loretta B. Costello as an individual, sir. I found the two returns are under her name which were joint returns.

Mr. Seymour: May I have Defendant's Exhibit C, please?

The Court: What was the one you asked for? C?

Mr. Seymour: Yes, your Honor.

The Court: Would you let me see it for a minute before you inquire about it, Mr. Seymour?

Mr. Seymour: Yes, your Honor (handing).

(768) The Court: Very well. Thank you.

Q. Mr. Murphey, I hand you Defendant's Exhibit C. As I recall, when you were here last time, defense counsel asked you to look at your schedules in connection with some payments credited on the date of February 21, 1947. And I also hand you Government's Exhibit 24.

Mr. Fennelly: February 20th was the date.

Mr. Seymour: I beg your pardon?

Mr. Fennelly: February 20th was the date. February 20th.

Q. Mr. Murphey, I hand you Government's Exhibit 24 and 212. Would you look and tell me, please, whether those schedules show any payments whatsoever under date of February 20, 1947? A. Yes, sir. They show three items paid that day.

Q. Check the date, sir. That is the question. A. Yes, sir.

Q. What is the date? A. February 21, sir, deposit.

Q. My question was, Mr. Murphey, does it show any payments on February 20th? A. No, sir.

Q. Does it show any payments on February 21? A. Yes, sir.

Q. I believe then, sir, my question is, when you were here last time you were asked by counsel for the (769) defense concerning payments shown on February 21, 1947 and in connection with that question, with the inquiry you were asked whether Defendant's Exhibit C relating to a tax liability for the year 1937 didn't show that there had been a payment on the date of February 21, 1947 in connection with the tax liability of 1937; isn't that correct? A. That is right, sir.

Q. And I believe you were also asked by defense counsel to check your records for the posting documents? A. Yes, sir.

Q. And did you find copies of those posting documents? A. Yes, sir, I have.

Q. May I have them, please? A. (Witness hands.)

Mr. Seymour: Would you mark this for identification?

(Marked Government's Exhibit 214 for identification.)

Q. Mr. Murphey, I hand you Government's Exhibit 214 for identification. Are those the copies of the posting documents relating to entries made under date of February 21, 1947? A. They are, sir.

Q. Do they relate to any payments concerning the tax year 1937? A. No, sir, they do not.

Q. I believe you testified when you were here before (770) that the tax liability in connection with the year 1937 had in fact been extinguished in 1946, isn't that correct? A. 1946, yes, sir.

W. X. Murphey—for Government—Recalled—Recross

The Court: Pardon me just a minute. You asked him a question whether they related to what year? 1937, was it?

Mr. Seymour: 1937, yes, your Honor.

The Court: Very well.

Q. It was in connection with that statement that Mr. Fennelly asked you about Defendant's Exhibit C; isn't that correct? A. That is right, sir.

Q. Now, sir, would you tell us, is it not the fact that the 1937 liability was extinguished in 1946, as you had originally stated? A. Yes, sir, that is true. It was extinguished in July 1946, and the tax lien being lifted the same date, or within a day after the payment of the additional liabilities, was just a coincidence.

Q. Just so we have it straight, Mr. Murphey, before, when I asked you whether you found any tax returns filed under the name of Loretta B. Costello prior to 1937, I believe you said that you had found two joint returns filed under her name; is that correct? A. That is right.

Q. Were you then referring to the Defendant's Exhibits EE and FF which have just been received in (771) evidence? A. I was, sir.

Q. You found no other returns? A. No others, sir.

Mr. Seymour: I have no further questions.

The Court: What year was it you say that 1937 liability was discharged or extinguished?

The Witness: July 1946, sir.

The Court: 1946.

Recross Examination by Mr. Fennelly:

Q. Now, under Defendant's Exhibit C, that is a certificate, is it not, dated February 20, 1947? A. That is right, sir.

Q. By the Bureau of Internal Revenue? A. Yes, sir.

Q. Certifying to the release of a lien on February 20th, isn't that right? A. That is right, sir.

Q. And isn't it a fact that you did receive, that is, your Bureau, on February 20, 1947 some $24,000 the same date as the certificate? A. Yes, sir. That is right.

Mr. Fennelly: That is all.

Mr. Seymour: No further questions.

Would you mark this, please?

(Marked Government's Exhibit 215 for identification)

Mr. Seymour: And would you mark this, please?

(Marked Government's Exhibit 216 for identification.)

(772) Mr. Seymour: If your Honor please, the Government respectfully offers in evidence Government's Exhibits 215 for identification and 216 for identification, being certain papers bearing the signature and the name of Frank Costello.

Mr. Fennelly: I object to them, your Honor, as being irrelevant and immaterial, dating back to 1932 in New York State, and prior to the point where the Government starts its case, and also to certain information contained in it, which your Honor will see.

The Court: Yes. I will hear you, Mr. Seymour.

Mr. Seymour: If your Honor please, I submit that defendant's Exhibits EE and FF not only opened the door for these two exhibits in terms of establishing their relevancy but also to the extent of counsel's questions of the last witness as to who

signed those particular returns and as to the indication of whether they are a joint return or not, I submit that the person signing the documents and the exhibits before you is relevant to rule out any inference that the fact of signing the return necessarily indicates who earned the income.

I also submit that a statement contained on the face of that return, I believe in almost identical language, to a statement on Defendant's Exhibits EE and (773) FF is relevant.

The Court: Let me see those.

(Papers handed to the Court.)

The Court: I think that is not the statement that Mr.—am I correct in assuming that the information that you said was contained in here that you thought was improper was the part contained on the face?

Mr. Fennelly: That is right.

Mr. Seymour: The Government makes no offer with respect to that portion and happily withdraws it from it.

The Court: If you withdraw that, I will overrule the objection.

Before they are admitted, that will be covered up and blocked out. I would suggest that you not attempt to physically remove it because that is a certified document, but you may block it out.

Mr. Seymour: May I, in lieu of that, read certain statements from the record completely apart from that?

The Court: That you may do, but I also suggest that you cover it up because at some time, in some way, that may go to the jury and the jury would

be entitled to read every part of the exhibit that is visible. But, as of now, you may read any part of the exhibit (774) you desire and, of course, Mr. Fennelly may read any part he desires.

Mr. Seymour: Thank you.

May I also read corresponding excerpts from Defendant's Exhibits EE and FF?

The Court: You may.

Mr. Seymour: Ladies and gentlemen, Defendant's Exhibit EE is a tax return for the calendar year 1934, filed under the name of Loretta B. Costello, 241 Central Park West, New York, bearing this question:

"Is this a joint return of husband and wife?"

And bearing the answer, "Yes," signed under date of August 2, 1933, in the name of Loretta B. Costello, showing a net income in the amount of $17,500.

Government's Exhibit 215 is a certified copy of the New York State individual income tax return for the year 1931. This return is under the name of Frank Costello, 241 Central Park West, New York, N. Y. On the face of this return is this question:

"Is this a joint return of the income of husband and wife?"

And the answer written here is, "Yes." The return is signed under date of March 5, 1937 by Frank Costello and it shows, as a net income, $17,500.

Defendant's Exhibit FF is an individual income (775) tax return, Federal, for the calendar year 1932, again under the name and address of Loretta B. Costello, again with the same question, about

whether this is a joint return, and again with the answer, "Yes." Again signed in the name of Loretta B. Costello, under date of August 2, 1933, and showing a net income of $15,000.

Government's Exhibit 216 is a certified copy of a New York State individual income tax return for the same year, 1932, this one in the name of Frank Costello, 241 Central Park West. Again the question, "Is this a joint return of husband and wife?" The answer, "Yes." Signed, Frank Costello, March 5, 1937, showing a net income in the amount of $15,000.

Would you mark this, please?

(Marked Government's Exhibit 217 for identification.)

Mr. Seymour: At this time, if the Court please, the Government offers in evidence Government's Exhibit 217 for identification.

The Court: Before you describe it any further you had better show it to your adversary.

Mr. Seymour: May I identify the exhibit numbers to which this relates?

The Court: Yes.

Mr. Seymour: These pages are photostatic pages (776) of certain of the pages contained in Government's Exhibit 28 in evidence and Government's Exhibit 29 in evidence.

The Court: Certain pages already in evidence?

Mr. Delaney: No, they are for identification.

Mr. MacMahon: Identification.

Mr. Seymour: Yes, that is right.

I have an extra set of these pages, your Honor, if you would care to look at it while counsel is looking at it.

The Court: Yes.

(Papers handed to the Court.)

The Court: Are these pages different from those contained in Exhibit 30, which was received in evidence?

Mr. Seymour: Yes, your Honor, they are, at least the portions that are exposed for reading on these pages are different.

The Court: That is what I mean.

Mr. Seymour: Yes.

The Court: The questions which are here haven't been heretofore admitted—

Mr. Seymour: No.

The Court: —as part of Exhibit 30.

All right.

It looks as though this might take a little time (777) for you to read this.

So I suggest, ladies and gentlemen, that you take your recess.

(Jury retires.)

(Short recess.)

(Jury not present.)

The Court: All right. Bring in the jury.

(Jurors in box.)

Mr. Seymour: May I proceed, your Honor?

The Court: Yes.

Mr. Seymour: Your Honor, at this time the Government withdraws its offer of Government's Exhibit 217 for identification.

Colloquy

Mr. Seymour: Yes.

The Clerk: I understand.

Mr. Seymour: Would you mark this one?

(Marked Government's Exhibit 218 for identification.)

(Marked Government's Exhibits 219, 220 and 221 for identification.)

The Court: Let me see 220 again.

Mr. Seymour: If your Honor please, 220 and 221 are in fact the same transactions.

The Court: Yes, I understand that. Let me see (778) 220 again—219.

Mr. Seymour: If your Honor please, the last page of Government's Exhibit 220 for identification bears a date which I am advised by the certifying officer is a typographical error. We have marked Government's Exhibit 221 for identification to make the record clear as to the date which should apply to the last page, and I am advised by the certifying officer that a further certification of that particular page is on its way so that it may be substituted if there is any question about it.

The Court: Very well.

Mr. Seymour: At this time, if the Court please, the Government respectfully offers Government's Exhibits 218, 219 and 220 being certain certified documents.

Mr. Fennelly: I object to them, your Honor, as irrelevant and immaterial. The information in them is already contained in the assessment list and shows all the taxes are paid.

Mr. Seymour: If your Honor please, I submit that these three exhibits by themselves, not only

as to the matters to which counsel has alluded but also to the fact that the transactions to which they relate were consented to by the parties involved, and by the very fact of the official transaction shown in these documents (779) is corroborative of the net worth starting point in this case and also negatives the accumulation of cash with respect to income earned prior to the starting point as of October 18, 1937.

I submit that, under the cases, in fact under a very recent case, this type of evidence is plainly admissible to corroborate the absence of accumulated cash. In this instance, significant not only as to the defendant but also as to the other person named in those documents as brought out—in connection with the matters brought out by counsel for the defendant through the last witness.

Mr. Fennelly: As your Honor will recall, it was the Government who examined the witness as to the 19—the fact of the existence of the 1931 and '2 returns, and I cross-examined him on the subject.

The Court: Yes.

Mr. Fennelly: These papers relate, some of them, back to 1927, 1931, 1932—

Mr. Seymour: If your Honor please, I submit—

Mr. Fennelly: —and the facts contained in here are in the assessment list.

The Court: Well, let me—

Mr. Fennelly: Would you give those to the Court, please?

(780) The Court: Do you propose to offer 221 for identification?

Mr. Seymour: Your Honor, if your Honor would refer to the last sheet included in Exhibit 220 for identification, the very last page, your Honor will notice on the lower lefthand corner a date relating

to that document. The year there is ten years off, I am advised, as a clerical typographical error. 221 for identification—

The Court: You mean this last date?

Mr. Seymour: Yes, your Honor. 221 for identification makes the fact that is a typographical error abundantly clear being a certificate in fact given under date of June 22, 1944, the certificate itself. And this is purely for the purpose of correcting that typographical error. And for that limited purpose it is offered, your Honor.

The Court: What is this citation that you mention? Would you give it to me?

Mr. Seymour: Yes, your Honor. The case I refer to is Holland v. United States in 209 Fed. 2d, starting at page 516, and there your Honor will find—

The Court: Is that a Second Circuit case?

Mr. Seymour: That is a Tenth Circuit case. It is still in the advance sheets.

(781) The Court: And the citation is?

Mr. Seymour: 209 Fed. 2d, 516. And I cite it for the purpose simply of showing the recital of the evidence considered by the Court below and by the Court on appeal.

The Court: I am not going to hold everybody up while I read these three documents. I will reserve decision on them until I have a chance to look over it. May I keep these, or do you have copies? May I keep them to make a study of them?

Mr. Seymour: Certainly, your Honor.

The Court: We have pending your offer of 221, haven't we?

Mr. Seymour: Yes.

It is part and parcel of those three exhibits you

have before you and for that limited purpose that I outlined.

Mr. Fennelly: Same objection as to that, your Honor. The amounts appear on the assessment list and appear to have been paid.

Mr. Seymour: Your Honor, may I inquire whether Mr. Fennelly's objection applies to the very limited purpose for which that document is offered, to wit, to correct the typographical error as to the date?

Mr. Fennelly: I object to it for all purposes.

(782) The Court: He is objecting to it on the theory that no part of any of these four exhibits is relevant or material.

I take it that what it really comes to is that it is repetitious. Isn't that really what your objection comes to, that all the information that appears in these four documents is already in evidence?

Mr. Fennelly: That is right, it is in the assessment list.

The Court: That you are really objecting on the ground that it is repetitious.

Mr. Seymour: If your Honor please, I submit that the assessment lists are not in evidence, are marked for identification, and were kept out by Mr. Fennelly's objection.

Mr. Fennelly: Not at all. You made a schedule from them.

Mr. Seymour: As to this particular question, your Honor.

Mr. Fennelly: You have made two schedules from them—three schedules.

The Court: Well, I will look at this.

Mr. Christy: The Government calls Miss Libbie Todel.

Libbie Todel—for Government—Direct

(783) LIBBIE TODEL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Todel, where do you live? A. 953 Simpson Street, Bronx, New York.

Q. Will you keep your voice up just a little so the last man in the jury box can hear you? Where are you employed, Miss Todel? A. R. H. Macy & Company.

Q. Do you work at a branch of Macy's, that is, Macy's bank? A. That is right.

Q. Do you have a position there? A. Yes, I have.

Q. And what is that position, Miss Todel? A. I am supervisor in the bookkeeping department.

Q. You are supervisor of the bookkeeping department? A. That is right.

Q. How long have you been with R. H. Macy? A. 15 years.

Q. Miss Todel, are you familiar with the methods of keeping accounts at Macy's bank? A. Yes, I am.

Q. Do customers of Macy's bank keep regular charge accounts as they do in other stores? A. No, it is not a charge account.

(784) Q. Will you explain just briefly what kind of account it is and how it works? A. Well, it is called depositors account.

Q. Depositors account? A. That is right. It is called DA department, depositors account. A customer deposits money into the account and purchases against that money.

Q. So any purchases are debited against the balance on deposit, is that correct? A. That is right.

Q. Do the customers make deposits from time to time in accordance with their purchases? A. Right.

Q. Miss Todel, do the customers of Macy's bank, those that keep money there, have one of these DA accounts, do

they receive interest on their deposits? A. They receive interest on their balance.

Q. Or their balance? A. Amount of money they have in the account.

Q. What is the rate of that interest? A. 1½ per cent per annum.

Q. Are there certain minimum figures on which that is computed? A. Yes, we give interest from 25 to 500 dollars.

Q. So the interest of 1½ per cent is paid on a balance between 25 and 500 dollars? A. That is right.

Q. Over $500 it is at the rate of 1½ per cent? (785) A. That is right.

Q. Do the customers of the bank also receive a bonus on their purchases? A. That is right.

Q. What does that amount to? A. They receive 1 per cent of the amount of the purchases made throughout the year.

Q. Is that computed—from what month is that computed? A. That is computed from October to November.

Q. November to— A. From November until October.

Q. Are the customers—

Mr. Christy: Withdraw that.

Q. Are monthly ledger cards maintained for the customers of the bank? A. Yes.

Mr. Fennelly: I object to the characterization of the bank, your Honor. It is not a bank.

The Court: That part of Macy's which Macy's calls its bank. I assume that is what was meant.

Mr. Christy: It is referred to as Macy's bank, your Honor.

Q. Monthly ledger cards are maintained for the customers of Macy's bank, is that correct? A. That is right.

Q. How long do these ledger cards run? A. They run for four years.

Q. At the end of four years, after the last entry, (786) what happens to the ledger cards? A. They are filmed. The cards are destroyed but they are filmed first.

Q. Before they are destroyed they are put on microfilm? A. That is right.

Q. Are these ledger cards records kept in the regular course of Macy's business? A. Yes.

Q. And is it the regular course of business to keep such records? A. Right.

Q. And are the microfilmed ledger cards—

Mr. Christy: I withdraw that.

Q. Is the microfilm of the ledger cards also a record kept in the regular course of business? A. Yes.

Q. Can you make that available to the Court, if it so desires? A. Yes.

Q. Miss Todel, in your position do you have access to the records of Macy's bank? A. Yes, I have.

Q. Are you familiar with those? A. Right.

Q. Have you brought certain ledger cards for the account of Mrs. Costello? A. Yes, I have.

Q. May I have them, please? A. (Handing papers to Mr. Christy.)

(Marked Government's Exhibits 222, 222-A and 222-B for identification, respectively.)

(787) Q. Miss Todel, I hand you Government's Exhibits 222, 222-A and 222-B for identification. Will you tell us what Government's Exhibit 222 is? A. Yes, it is a ledger card with the customer's balance, the amount of money she has in her account and the amount of purchases she made for each month.

Q. Miss Todel, is that—

The Court: For what period?

The Witness: The one I am reading now is for '45, '46 and '47.

Q. Is that the enlargement of the microfilm? A. That is right.

Q. The original of that ledger card has been destroyed? A. That is right.

Q. Government's Exhibit 222-A and Government's Exhibit 222-B for identification, will you tell us what they are? A. They are also ledger cards with the customer's balance and the amount of her purchases for each month.

The Court: 222-A covers what period?

The Witness: 222-A covers part of '47, '48 and one month of '49—no—yes, '47, '48 and '49.

The Court: And the next one?

The Witness: The next one covers '49, '50 and '51.

(788) Q. So that from Government's Exhibits 222, 222-A and 222-B for identification you have a record of Mrs. Costello's account from 1945 through 1949, is that correct? A. Right.

Mr. Christy: Your Honor, at this time I offer Government's Exhibits 222, 222-A and 222-B.

Your Honor, may we substitute photostats for 222-A and 222-B, which are original records?

The Court: Yes. And you are not offering anything covering the year '50 and '51?

Mr. Christy: That is correct.

The Court: You will block that out?

Mr. Christy: It will be so blocked out.

Libbie Todel—for Government—Preliminary Cross

Mr. Fennelly: May I examine the witness preliminarily, your Honor?

Preliminary Cross Examination by Mr. Fennelly:

Q. Except for pencil notation on here of the year there is nothing on here to indicate on the form of the card itself what year it is for, is there? A. No, there isn't.

Q. And whose handwriting is that— A. That is my handwriting.

Q. —1951? On the face, and I am referring to Government's Exhibit 222-B for identification, and on the other side of the card, there is no indication (789) on that to indicate what year it is, is there? A. No.

Q. And the same is true with respect to Government's Exhibit 222-A, is it not? A. That is right.

Q. And who wrote in pencil in here (indicating)? A. I wrote that.

Q. They are not normally on these cards in the regular course of business of Macy's, are they? A. No.

Q. That notation? A. No, they aren't, although this figure up here, with the ninth month, '47, that was put on by one of the—

The Court: You are pointing to a card which is marked—

Q. You are referring— A. 222-A.

Q. —to Exhibit 222-A and you say the— A. That notation—

Q. —the crayon 9/47— A. '47.

Q. —to indicate September 1947— A. That is right.

Q. —who put that 9/47 on? A. One of the operators in the department.

Q. One— A. One of the bookkeeping operators, 9/47.

She probably put that down 10 47 when she started working on that new card.

(790) Q. On Exhibit 222-B there is no such— A. No.

Q. —notation of when the card is for, is there? A. No, there isn't.

Mr. Fennelly: I object to them, your Honor, on the ground that they are irrelevant and immaterial.

The Court: Overruled. They may be received.

(Marked Government's Exhibits 222, 222-A and 222-B, respectively, in evidence.)

By Mr. Christy:

Q. Miss Todel, a customer's deposits in the bank are not recorded on these ledger cards, is that right? A. That is right.

Q. However, upon an examination of these cards can you determine how much was deposited? A. Yes, we can.

Q. Will you tell us how you can determine that?

The Court: It looks as though you are going to have to take a little time. It is past the recess hour now. So I think we will have to adjourn until tomorrow morning.

(To the witness) You will have to come back at 10.30 tomorrow morning. I thought maybe we might be able to finish with you, but it looks as though it might take a little while.

So we will adjourn until 10.30 tomorrow morning.

(790-A) (To the jury) Ladies and gentlemen, remember the instructions: Don't talk about the case among yourselves, and certainly not with anybody

else, and keep your minds completely open until all the evidence is in.

(Adjourned to April 21, 1954, at 10.30 a.m.)

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(791) New York, April 21, 1954;
10.30 o'clock a.m.

Trial resumed.

(The following proceedings were held in the absence of the jury.)

The Clerk: If there are any witnesses present in the courtroom they will please retire to the witness room.

The Court: Now, at the close of the session last evening we had pending the offer of 219, 220—218, 219 and 220 for identification. I spent some time—did you want to say something?

Mr. Fennelly: Before your Honor is going to make a ruling, I wanted to clarify the record about my objection, if I may.

I think you had asked me whether or not it was actually on the basis of duplication of proof, but I think it goes beyond that. I think that all the necessary proof of the fact payment and whether or not the judgment was obtained against either Mr. or Mrs. Costello would seem to me to be irrelevant and immaterial (792) and also prejudicial where the same amount of tax appears on—the assessment appears on the Government's exhibit and the witness has testified that that tax had been paid.

Mr. Seymour: May I be heard?

The Court: The point, I studied it some last night, and again this morning, and I don't know what they intend to prove, assume this were admitted, what inference can the jury draw from it except the prejudicial inference that Mr. Fennelly refers to.

Mr. Seymour: If your Honor please, the simple fact of paying off the liabilities, to which Mr. Fennelly alludes, I submit is not in and of itself the full picture of the inability of these taxpayers during the beginning of this—the starting point and the beginning years of our net worth period of their inability to pay. I submit that it is not complete proof of that, in view of the fact that the Government, in its efforts to collect, was not merely operating on some mutually understandable installment payment plan but rather was having difficulty in collecting these funds, and I submit the fact that they actually had to proceed to judgment indicates quite forcefully that the defendant and his wife had no prior accumulated funds available at that time to make the payment.

(793) I submit, further, that the fact that the judgment here was entered on consent of the defendants makes it plain that there was not a question of the contest to the liability but rather emphasizes the fact that they were unable to pay.

The Court: Well, I doubt that. I don't see that argument at all. It may very well be that the failure to pay or the absence of the payment was due to a difference of view as to whether or not there was a liability, number one, and the fact that they waited until suit was started before they paid wouldn't mean that they were unable to pay—it might mean no more than that they were going to contest it; and

then, finally, when they consented to the judgment that might very well mean no more than that they decided, well, it was cheaper to pay than to litigate.

But coupled with that is the prejudicial attitude here, I mean, the prejudicial point that back in 1931 these people were attempting to evade their taxes, and that is not a charge for which the defendant is under indictment and trial at the present time.

You have now in your record proof that it was not until 1947 that all of these back taxes were paid up, and that was developed finally yesterday, that these back taxes were hanging fire, for one reason or another, (794) from back in the thirties up until 1947 and it wasn't until then that they were paid. And I am going—

Mr. MacMahon: May I be heard just briefly, your Honor?

The Court: Y .

Mr. MacMahon: I subm it that to the extent that we have this lag in paying off these taxes in the early thirties through to the forties, to the extent that that is prejudicial, that prejudicial point is already in the record and therefore there can be no further prejudices by these judgments. These judgments, your Honor, are against—one of them is against Loretta Costello; at this point in the record there is no proof of any judgment against her or against her inability to pay or anything to show that, beyond what inferences the jury may draw from the fact that she filed no income tax return. And I submit, your Honor, that proof of straightened circumstances is competent in this type of case to corroborate the net worth starting point. The cases are not legion.

The Court: Well, that is a very handy—

Colloquy

Mr. MacMahon: First—

The Court: Just a minute, Mr. MacMahon. That is a very handy catch-all argument, that the cases are legion.

(795) Mr. MacMahon: Well, they are, your Honor.

The Court: You gave me one last night, and it doesn't stand for the proposition for which it is offered, in my opinion. Now, I will withhold ruling on the offer and you can give me some of the legion cases. I think it is prejudicial. But I will give you the opportunity now to make good your offer—

Mr. MacMahon: I will, your Honor, I will be glad to.

The Court: —to show me the legion cases.

Mr. MacMahon: Proof of straightened circumstances—

The Court: No, never mind that. We are not in law school. We are discussing whether or not these particular exhibits, 218, 219 and 220 should be admitted in this case and whether or not they are proper. Now, you show me the cases in support of that and I will withhold my ruling until you do.

Mr. MacMahon: Well, your Honor, I can say now that I can't show you a case where a judgment for outstanding tax liability as such went into a case. But as I understand your Honor's ruling—

The Court: I did not expect, Mr. MacMahon, that you were going to find me a case on all fours with the proposition that you have now.

(796) I have practiced a little longer than you have and I am sure that the instances where that occurs in the books are very few, but you find me some cases other than the one you cited, the Holland case, that would sustain the admission of these exhibits, and I will withhold my ruling until such

time as you submit them to me, but as of now, I will not let them in.

Mr. Seymour: May I inquire, your Honor—

The Court: My disposition at the present time also is to sustain the objection to the admission of those three exhibits in evidence.

Now, there was another matter that we discussed, which was not on the record.

Mr. Seymour: Yes.

The Court: If you want to have those marked and have a ruling on them, you may.

Mr. Seymour: Yes, I believe you have the exhibits.

Mr. Fennelly: May I see these, your Honor? I haven't seen them?

Mr. Seymour: Would you mark this?

(Marked Government's Exhibit 223 for identification.)

Mr. Seymour: Would you mark this as 223-A?

(Marked Government's Exhibit 223-A for identification.)

Mr. Seymour: And 223-B.

(797) (Marked Government's Exhibit 223-B for identification.)

The Court: Suppose I give these back to you, Mr. Seymour, that is, 218, 219, 220 and 221?

Mr. Seymour: Yes, your Honor.

(A pause.)

Colloquy

Mr. Seymour: Perhaps, your Honor, to make it clear for Mr. Fennelly's consideration of this I should specify that our offer is simply of the extract, the modified extract, which has been marked Government's Exhibit 223-B for identification and not the original.

The Court: Did you hear that, Mr. Fennelly, or were you reading?

Mr. Fennelly: No. I was reading, your Honor.

The Court: I thought you were. Mr. Seymour points out that what he is offering is the extract which has been marked 223-B for identification and not the original document from which the extract is taken.

Mr. Fennelly: I object to them, your Honor. It appears on the face of them it was made pursuant to a specific agreement with the United States that they were never to be used. The United States is now seeking to violate that agreement.

Mr. Seymour: I submit that at no place is there any sign of an agreement on the part of the United (798) States but rather a gratuitous statement on the part of the taxpayers.

The Court: Do you seriously urge that?

Mr. Seymour: Yes, your Honor, but the real point of the offer, your Honor, is that that statement, we submit, was made in connection with any question of liability for the tax years referred to in the offer in compromise and was not made with respect to any statement concerning the liability of the taxpayers to pay.

The Court: The objection is sustained.

Mr. Fennelly: Your Honor, there is one other matter. I would ask that Mr. Murphey of the Collector's office be recalled in connection with that schedule.

Colloquy

The Court: I don't hear you.

Mr. Fennelly: I would ask that Mr. Murphey—

The Court: Be recalled?

Mr. Fennelly—be recalled for further cross-examination because it appears that the schedule now that was offered is not correct. Right from the face of one of the—

The Court: Do you desire him recalled—

Mr. Fennelly: Yes, your Honor.

The Court: —for the purpose of establishing the inaccuracy?

Mr. Fennelly: Yes, that is right.

(799) The Court: Or to have what appears to you to be an inaccuracy cleared up?

Mr. Fennelly: Yes.

Mr. Seymour: If, in fact, there is an inaccuracy, the Government is anxious to have it corrected, and we would happily stipulate to any correction that is, indeed, in order.

The Court: Do you prefer to stipulate it or do you prefer to cross examine the witness?

Mr. Fennelly: I am sure that we could not arrive at a stipulation—I would—because what has happened, they have had Mr. Murphey not take facts from his assessment list.

The Court: I don't hear you.

Mr. Fennelly: They haven't had Mr. Murphey take the correct facts from his assessment list.

The Court: I don't know what you mean by that, they haven't had him do it. Your point is there are certain statements in that schedule which you think are inaccurate that you desire to examine upon?

Mr. Fennelly: That aren't so, that is right.

The Court: Very well.

Colloquy

Mr. Seymour: May I say for the record that the phrase "they haven't had" this witness do any particular thing is inaccurate. The schedule was prepared by this (800) witness in accordance with Mr. Fennelly's request. I submit that any implication of impropriety on our part is not justified.

The Court: I am sure that is so, and that is the reason I made that observation myself.

Mr. Fennelly: I think if you will look at the record, my request was simply that the witness prepare a break down of the—

The Court: But we are having enough difficulty now ruling on questions of evidence. I am quite sure that the United States Attorney and his assistants have not caused Mr. Murphey or any other witness to make any statement here or any place else other than in accordance with the facts. If that has occurred in any way I am quite sure, in the absence of some very clear demonstration, that it was not the result of anything done by the United States Attorney himself, or Mr. MacMahon or anybody in his office.

Let us get along now. That is one question on which I have no difference of opinion with the prosecutor's office at all.

Mr. Fennelly: And when will Mr. Murphey return? I would suggest he come back—

The Court: I was just going to say, that is the next point. When will it be feasible and convenient (801) to get Mr. Murphey in here?

Mr. MacMahon: Probably not until this afternoon. Mr. Fennelly advised me of this via his secretary this morning at quarter of ten.

Mr. Fennelly: That is all right, this afternoon.

The Court: This afternoon is all right. Fine.

I think that is pretty good. I thought it might not be possible until tomorrow or even later.

All right, we have got that all settled, if not cleared up.

May we go ahead with the jury now?

All right, let us get ahead.

(The jury enters the courtroom.)

The Court: Good morning, ladies and gentlemen. All right, call your witness.

Mr. Christy: The Government calls Miss Libbie Todel.

LIBBIE TODEL, resumed.

Direct Examination by Mr. Christy (Continued):

Q. Miss Todel, you will recall at the end of yesterday's session I had asked you about the ledger cards and whether there was a record on those ledger cards of the deposits made to the DA account in Macy's (802) bank by each customer. A. I do.

Q. And you told me there was no such record of the deposits? A. That is right.

Q. And that from the ledger cards you could reconstruct what the deposits had been made that had been made? A. That is right.

Q. And you were just about to tell us the system by which you can reconstruct these deposits? A. Yes, sir.

Q. Would you tell us how you do that? A. Yes; on the ledger cards, on the righthand side, we have an amount which is the net purchases of what the customer—the purchases that the customer has made for each month. On

the lefthand side we have her closing balance for that month. By subtracting the purchases from the closing balance you should arrive—from the opening balance; I am sorry, you should arrive at the closing balance. If you don't arrive at that closing balance, the difference would be a deposit that was made to the account.

Q. Let us go over that again: The deposits can be computed by subtracting each purchase from each previous balance, right? A. That is right.

Q. This would give you a new balance? A. Right.

Q. And if the difference of these figures is not (803) the same as recorded on the ledger card for the subsequent balance, the difference must be the deposit? A. That is right.

Q. If you add for one year the purchases recorded on that card, you would not necessarily arrive at the payments that had been made by the customer for the year, would you? A. No, you would not.

Q. In other words, a customer could deposit a thousand dollars in December of one year and draw against that all during the following year without making any other deposit? A. That is right.

Q. The deposits would be the actual figures which had been paid by the customer into the account? A. That is right.

Q. Miss Todel, have you made computations from Government's Exhibits 222, 222-A and 222-B as to the deposits made by Mrs. Costello? A. Yes, I have.

Q. Will you tell me what those deposits are?

The Court: By years.

Q. (Continuing) By year. The deposit in the year 1945? A. In 1945 it was $203.97.

Q. And in 1946? A. 1946 it was $800.

Q. In 1947? A. $900.

Q. 1948? A. $435.

Q. 1949? A. $901.

(804) Q. Miss Todel, have you also computed the bonus paid to Mrs. Costello on the annual purchases made by her? You remember you testified yesterday that she was given a bonus of 1-1/2—interest—a bonus of 1 per cent on the purchases? A. That is right.

Mr. Fennelly: Excuse me. I am not certain that I made an objection to all this testimony on the ground that it is irrelevant and immaterial.

The Court: I will inform you now that you haven't, but you are making it now and it is overruled.

Q. Miss Todel, have you made this computation on the basis of a 1 per cent bonus on Mrs. Costello's purchases? A. Yes, I have.

Q. Will you tell us what it was in 1945? A. $1.80.

Q. 1946? A. $8.82.

Q. 1947? A. $6.71—oh, no. I am sorry. It is $7.59.

Q. 1948? A. $5.26.

Q. 1949? A. $12.01.

Q. Miss Todel, have you also computed the annual interest on Mrs. Costello's deposit? A. Yes.

Q. You remember yesterday you testified the customer received 1-1/2 per cent interest rate on balances between 25 and $500? A. Yes, I have.

(805) Q. Will you tell us what the interest was in 1946? A. 60 cents.

Q. In 1947? A. $4.10.

Q. In 1948? A. $5.19.

Q. In 1949? A. $2.69.

Q. Miss Todel, I believe you testified yesterday that these payments for bonus and interest are paid at the end of the year? A. That is right.

Q. So if you wish to arrive at the accurate net payments by the customer for any one year you would have to substract the total of the interest and the bonus, is that correct? A. That is right.

Q. You have also testified as to deposits—

The Court: Wait a minute. That is not clear to me. You told us that in the year 1947 the depositor deposited—Mrs. Costello deposited—$900?

The Witness: That is right.

The Court: That was in addition—that did not include anything for interest?

The Witness: No, it did not.

The Court: Or a bonus?

The Witness: No, it did not.

The Court: I see. All right.

Q. To arrive at the net payments you would have to take—to give the customer credit for these payments? (806) A. That is right.

Q. You testified as to the deposits. Will you tell us what the net payments by the customer were in the year 1945? A. $202.17.

Q. 1946?

The Court: Just a minute. Let me have that.

The Witness: $202.17.

Q. You would arrive—

The Court: When you say "payments" you mean, now, this is money that Mrs. Costello, according to these records, paid to Macy's? Is that what you mean by "payments"?

Mr. Christy: She testified, your Honor, as to the payments made to Macy's, but Mrs. Costello re-

ceived checks from Macy's. So I wish to arrive at a net figure paid in.

The Court: She has what?

Mr. Fennelly: Excuse me—

The Court: Payments by Mrs. Costello?

Mr. Christy: She has already testified as to payments by Mrs. Costello.

The Court: I am confused. This figure of $202.17, what does that represent? Does that represent money that Mrs. Costello spent in Macy's store?

Mr. Christy: No, your Honor, that $202 is the (807) deposit by Mrs. Costello less the payments to her.

The Court: Payments of the interest or bonus?

Mr. Christy: To Mrs. Costello, yes.

The Court: I see.

The Court: These are deposits we are getting now?

Mr. Christy: Yes, your Honor.

The Court: Net deposits?

Mr. Christy: That would be a net deposit, yes, your Honor.

The Court: All right. It is not clear to me.

Mr. Fennelly: I was just looking at the exhibit, your Honor. I didn't understand the witness had testified that Macy's had actually made payments. I thought she said that was the custom, but I don't believe she testified of her knowledge of any payments having been made to Mrs. Costello.

Mr. Christy: Your Honor, on that, Miss Todel has testified to the custom. The record cards, ledger cards, don't show the actual payment, but it is the custom of Macy's to make these payments at the end of the year.

The Court: You may have the witness—Mr. Fennelly's point is that, whether it is the custom or

not, he doesn't recall the witness having testified about it. Now, you have the minutes there. If she (808) has already testified about it, point it out to Mr. Fennelly.

Mr. Fennelly: I think the prosecutor—

The Court: Maybe what is confusing is maybe we are getting into a semantic problem here of the word "payment."

Mr. Fennelly: No, I think the prosecutor admits there has been no such testimony. Isn't that correct?

Mr. Christy: Miss Todel is unable to testify from these records that payment was actually made.

Q. Now, Miss Todel, is it Macy's bank—the custom of Macy's bank to make these payments to the customer at the end of the year by check? A. That is right.

Q. And these payments—

The Court: Payments of what, the bonus and of interest?

Mr. Christy: Bonus and the interest, yes, your Honor.

The Court: I see. All right.

Q. Will you give us that figure for 1945 again? A. $202.17.

The Court: There again I am confused. Does this represent something that it is claimed Macy's (809) turned over to Mrs. Costello?

Mr. Christy: This figure that she has just given to us is in effect the net deposit by Mrs. Costello in the year 1945; and that figure is arrived at by taking the deposits—

The Court: That is the difference between the

$203.97 and the interest or the bonus of $1.80, which the witness says had been credited to her account, and then paid to her under the practice.

Mr. Christy: And also the other figure of the bonus.

The Court: Very well. That is the bonus. There was no interest, as I recall, for 1945. The first year for which interest was paid—

Mr. Christy: That is right.

The Court: —was 60 cents in 1946.

Mr. Fennelly: May I object to the computation, your Honor? There is no proof of the fact of any payment of bonus or interest.

The Court: That is a matter of weight. The witness has testified that is the practice. All right. Overruled.

Now, Mr. Christy, go ahead.

Q. Miss Todel, let us go back again. What is the figure in 1945? A. $202.17.

(810) Q. And 1946? A. $790.58.

Q. And 1947? A. $888.31.

Q. 1948? A. $424.55.

The Court: Just a minute. What is that?

The Witness: $424.55.

Q. 1949? A. $886.30.

Q. Miss Todel, just for the record, the figures that you have just given us are arrived at by subtracting the total of the interest and the bonus from the deposits that were made by Mrs. Costello? A. That is right.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I didn't.

Q. Now, there is nothing on your record, Government's Exhibits 222, 222-A and 222-B to indicate that any interest or a bonus was in fact paid to Mrs. Costello, is there? A. No, there isn't.

Q. Have you no records showing the payment? A. No, but I can tell you how we arrived at the figure.

Q. I am not interested in that. What I want to know is, hasn't Macy's any record showing the payment of either interest or bonus?

(811) Mr. Christy: I suggest, your Honor, Mr.—

A. I may be able to get a record for '48 and '49.

Q. What record? A. Taking it off a film, microfilm.

Q. What film? Film of what? A. The film of Mrs. Costello's account.

Q. Haven't you got that here? A. No.

Q. Of what account? A. That—I can't be too sure of it but I think we had filmed the bonus checks and the interest checks when they were sent out to the customers.

Q. Would you check that and let me know? A. Yes.

The Court: Any further questions?

Mr. Fennelly: That is all.

The Witness: Do I get the microfilm on that, the first part?

Mr. Christy: No further questions.

The Witness: How do I let the defense attorney know about that?

The Court: There is a practical problem that the witness raises, Mr. Fennelly. You have asked her to let you know something that you want to know. How do you wish to be informed of it?

Mr. Fennelly: It is not very important.

The Court: Let it go?

(812) Mr. Fennelly: Yes. I mean, I don't want to

put you to a lot of trouble. Don't bother. It's all right.

The Witness: Thank you.

(Witness excused.)

Mr. Pierpoint: The Government calls Maksoud Kalfaian.

MAKSOUD KALFAIAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Kalfaian, would you try to keep your voice up so the jurors can hear you? A. Yes, sir.

Q. What is your business, Mr. Kalfaian? A. We are carpet cleaners and rug dealers, servicing.

Q. And are you the owner of that business, sir? A. Yes, sir.

Q. And are you familiar with the records kept by that business? A. Yes, sir.

Q. Now, do you keep a record for each customer showing your transactions with that customer? A. Every one of them, yes, sir.

Q. Have you brought such a record for your account (813) with Mrs. Costello? A. Yes, sir.

(Marked Government's Exhibit 224 for identification.)

Q. Now, Mr. Kalfaian, I show you Government's Exhibit 224 marked for identification which consists of three sheets and I will ask you if these are ledger cards showing the amounts of payments made to your concern by Mrs. Costello? A. That is correct.

Q. And is this record kept by you in the regular course of business? A. Oh, yes.

Q. Is it the regular course of your business to keep this record? A. Oh, yes, we have to.

Mr. Pierpoint: The Government offers Government's Exhibit 224 for identification.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

Mr. Pierpoint: May the Government have permission to substitute photostats at the conclusion of counsel's cross examination?

The Court: You may.

(Government's Exhibit 224 for identification received in evidence.)

Q. Mr. Kalfaian, I think I neglected to ask you the name of your business? A. We are—we service (814) rugs.

Q. No, the name of the business?

The Court: What name do you operate under?

The Witness: D. Kalfaian & Son, Incorporated.

Q. Mr. Kalfaian, I show you Government's Exhibit 224 in evidence and ask you where on these cards the payments made by the customer Mrs. Costello are shown? A. It is paid over here, amount is paid.

Q. That is the third column from the right on the card it shows the amount paid? A. That is right.

Q. And the last column on the right shows the date, is that right? A. The date it is paid, yes.

Q. And this record runs from the year 1937 through the year 1949, is that correct? A. That is correct.

Q. Now, Mr. Kalfaian, have you made a computation of the amounts paid on this account in each year running from 1937 through 1949? A. You mean the total?

Q. The total amounts paid. A. Yes. $1,905.47.

Q. You have made such a computation? A. Yes.

Q. Will you give me the amount for 1937? A. $138,67.

Q. $138.67? A. That is correct.

Q. For 1938? A. $110.98.

Q. That is 110.98. 1939? A. $125.98.

Q. $125.98? A. Yes.

(815) Q. 1940? A. $125.98.

Q. That is $125.98. 1941? A. $135.98.

Q. 135.98? A. That is correct.

Q. 1942? A. $149.66.

Q. That is $149.66. 1943? A. $160.78.

Q. That is $160.78. 1944? A. $156.30.

Q. $156.30. 1945? A. $170.90.

Q. $170.90? A. Yes, sir.

Q. 1946? A. $202.40.

Q. That is $202.40? A. That is correct.

Q. 1947? A. $207.10.

Q. That is $207.10. 1948? A. $203.94.

Q. That is $203.94. And 1949? A. $16.80.

Q. $16.80. Now, Mr. Kalfaian, the figure that you gave for the year 1937 which was $138.67, will you read, in the far righthand column, the date on which that payment was made? A. 9/13/37.

Q. That is September 13, 1937? A. Yes.

Cross Examination by Mr. Fennelly:

Q. Did you appear and testify before the grand jury that returned the indictment in this case? A. No.

Q. I wonder if you would mind explaining these cards to me. Government's Exhibit 224, in the first column, under date—what is that? Is that a date? (816) A. This

is the date that the work is taken, you know, that is the date. This (indicating) is the order number.

Q. Under a heading "Order number," that is the order number— A. That is right.

Q. —of the work that you take? A. Yes, sir. This (indicating) is the date of taking.

Q. Where it says "Date," is that right? A. That is right. This is the order number. It goes in the book, you know; this (indicating) means washed; you know "W" means washed. This is checked, "Clean," "CL," yearly storage, you know. And this is, the "A" is the column where it shows in the ledger. This (indicating) is the total charged; this (indicating) is the date of delivery. And this (indicating) is the total, that is right.

Q. You mean under where it says "Amount paid," those are the amounts that were paid by the customer? A. That is right. And it is paid on such and such a date.

Q. And following that is a column "Date paid" which indicates the date of payment to you, is that correct? A. That is correct, yes, sir.

Q. Now, on taking this first card, 224, where you (817) say you had the dates where you took the material for working— A. That is right.

Q. On the sixth line you apparently took something in on September 30th, 1937, is that right? A. Si a line? 1, 2, 3, 4, 5, 6.

Q. That is right. Is that right? A. That is right.

Q. Is that right? A. That is right.

Q. Now, I notice that immediately before that you have a line where you have taken in something to work on in 1939, over two years after. A. You mean—are you talking about this item here (indicating), or this item (indicating)?

Q. No. I first referred you to the sixth line, where you have a date of receiving something to work on on September 30th, 1937; isn't it? A. This one here (indicating)?

Q. Yes. A. Yes. This is for the storage of a rug that was left with us.

Q. Now, I notice on your card that immediately preceding September 1937 that you have an entry of something that you had taken in in 1939. A. Are you talking about this (indicating)?

Q. Now, I am talking about the item immediately preceding the sixth line which is work taken in in 1937? (818) A. As I told you, this is a rug left with us, and each year that is—because it is left with us, it is $15 storage.

Q. But what I am trying to get at is, are these cards made up at the time the work comes in to you? A. Every time, yes; each year that comes in it is listed in the ledger.

Q. Are the entries—

Mr. Pierpoint: I think I could straighten this out in the interest of saving time.

The Court: This is cross examination.

Q. Are the entries made on these cards as you take the work in? A. That is correct.

Q. And they are made in order, one after the other, as you take the work in? A. That is right.

Q. All I am trying to find out is how an item can be entered in the year 1937 on the line after you have an entry that you took in work in 1939? A. Well, each year, that is the year 1937, the next year when we take it, the same card it is listed in the—on the same card. That is the only way we keep our records. Of course this is taken from the order book, or the ledger.

Q. You mean you write out new cards? A. No, that is the same card.

(819) Q. You carry—what you mean is you carry this item forward again for the year, is that it? A. This card stays in the place, you know, and every time that you—next year when you get a job, or the same year, the order

number and everything is listed on this card, so this is this customer's card.

Q. So that if you have—if you still had a rug in storage you mean, for example, in—that you got in 1937, when you come to 1939 you would still carry it over on your card; is that what you mean? A. Oh, yes.

Mr. Fennelly: Thank you, sir.

Mr. Pierpoint: I request permission to substitute photostats.

The Court: You may.

Mr. Pierpoint: Thank you, Mr. Kalfaian.

The Court: Does that finish this witness?

Mr. Pierpoint: Yes, your Honor.

The Court: All right, you may step down. We will take our recess now.

(Short recess.)

Mr. Pierpoint: The Government calls Mr. Meyer Kaplan.

(820) MEYER KAPLAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: Now, keep your voice up, Mr. Kaplan, will you, please, so the last juror can hear you?

Direct Examination by Mr. Pierpoint:

Q. Mr. Kaplan, what is your business? A. I am in the picture and framing business, picture framing.

Q. What is the name of your company? A. Louis Antoville, Incorporated.

Q. And what is your position with the company? A. President.

Q. Are you familiar with the books and records maintained by your company? A. I am.

Q. Have you brought with you records showing payments to your company by Mrs. Costello? A. I have.

The Court: By whom?

Mr. Pierpoint: Mrs. Costello.

(Marked Government's Exhibit 225 for identification.)

Q. Now, Mr. Kaplan, I will show you Government's Exhibit 225 for identification. Will you tell me what this is? A. That is the—we have a card system, (821) and the original—

The Court: Will you please keep your voice up a little? I can't hear you.

Q. Will you speak so the last juror can hear you? A. We have a card system in running the business; the original order is written down for the customer, the amount and date the purchase is made. It goes into the ledger, and from the ledger it goes into the customer's personal card, and debits and credits appear.

Q. So that this card shows the payments made by this customer? A. That is right.

Q. Is this card a record kept in the regular course of business? A. That is right.

Q. And is it the regular course of your business to keep this card? A. It is, yes.

Mr. Pierpoint: The Government offers Government's Exhibit 225.

Meyer Kaplan—for Government—Cross

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 225 for identification received in evidence.)

Q. Now, Mr. Kaplan, this card shows at the top the name Mrs. Costello, 115 Central Park West? (822) A. That is right.

Q. And it shows payments during the years 1944 and 1949, is that correct? A. That is right.

Q. Have you totaled the payments made in the years 1944 as shown by the card? A. I have it here.

Q. What does that total? A. $209.

Q. That is $209? A. That is right.

Q. And what is the payment made in the year 1949? A. That is $48.50.

The Court: The first year was '44, was it not?

Mr. Pierpoint: 1944, yes, sir.

The Court: What was the last amount?

Mr. Pierpoint: $48.50, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I did not, sir.

Mr. Fennelly: That is all.

The Court: Do you have any further questions of this witness?

Mr. Pierpoint: No further questions, your Honor. I should like to substitute a photostat.

The Court: You may do that.

Mr. Pierpoint: Thank you, Mr. Kaplan.

(Witness excused.)

(823) Mr. Pierpoint: The Government calls Mr. Edmund Bialkowski.

EDMUND BIALKOWSKI, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Bialkowski, will you try to keep your voice up so the last juror in the box can hear you? A. I will try to.

Q. What is your business, Mr. Bialkowski? A. I am an office supervisor at RCA Service Company in the New York office.

Q. What does the RCA Service Company do? A. We install and service RCA-Victor television receivers.

Q. Do you do that on a contract basis? A. Both on a contract and on what we call demand service basis.

Q. When you do it on a contract basis what is the arrangement that you make with the customer? A. Well, the customer purchases a contract in advance for a period of one year, for which we provide service to the television receiver and antenna if it is covered by the contract.

(824) Q. You say you also do other work other than the work you do under your contract? A. Yes, we do.

Q. When you execute a contract with the customer, or a contract is renewed, do you send it to the customer and receive back from the customer a slip indicating the amount of the charge for the contract? A. Yes. It is an application that is returned to us with the cost of the contract.

Q. Have you brought with you such a slip relating to a

contract with Mrs. L. B. Costello? A. Yes, I have.

Q. Now, when your company does work for a customer not covered by the contract, is there a work order made out? A. Yes, there is.

Q. Is a copy of that work order retained by your company? A. Yes, it is.

Q. Have you brought with you such a work order for work done for Mrs. Costello? A. Yes, I have.

Q. Would you let me have those two records? A. (Witness hands to Mr. Pierpoint.)

(Marked Government's Exhibit 226 and 226-A for identification.)

The Court: Is 226 the contract?

The Clerk: Renewal slip is 226 for identification. Is this the work order?

(825) Mr. Pierpoint: That is the work order.

The Clerk: 226-A for identification is the work order sheet.

Q. Now, Mr. Bialkowski, I show you Government's Exhibit 226 for identification and I ask you if this is a renewal slip received with the remittance from the customer? A. Yes, it is.

The Court: When you say renewal, you mean renewal of a contract?

The Witness: That is right, your Honor.

Q. I show you Government's Exhibit 226-A for identification and ask you if this is a work order showing work done for a customer and the amount paid? A. Yes, it is.

Q. Both Government's Exhibits 226 and 226-A, are these records kept in the regular course of business by your company? A. Yes, they are.

Edmund Bialkowski—for Government—Cross

Q. And is it the regular course of the company's business to keep these records? A. Yes, it is.

Mr. Pierpoint: The Government offers Government's Exhibits 226 and 226-A.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(826) (Government's Exhibits 226 and 226-A for identification received in evidence.)

Q. Mr. Bialkowski, I show you Government's Exhibit 226 in evidence, which is the renewal slip and ask you if this exhibit shows the amount and the date on which the amount was paid for the renewal of the service contract? A. Yes, sir. The amount is $90 and was received by RCA Service Company on July 18, 1949.

Q. Would you check—July 18, that is correct. And I show you Government's Exhibit 226-A in evidence and ask you if this shows the amount received for services rendered and the date on which the amount was paid? A. Yes. The amount is $15 and it was received by our cashier on December 13, 1949.

Q. And this Government's Exhibit 226-A is for work done not covered by the contract? A. That is right.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. Did I?

Q. Yes, sir. A. No, sir.

Q. And the payment of $90, was that by check? A. I am unable to say. I would assume that it is. I am not sure.

(827) Mr. Pierpoint: I have no further questions. I would like to substitute photostats.

The Court: You may.

Mr. Pierpoint: (To the witness) Thank you.

The Court: You may step down.

(Witness excused.)

Mr. Christy: Your Honor, the Government calls Samuel Kalmus.

SAM KALMUS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

The Court: Mr. Kalums, will you keep your voice up so the last juror in the box can hear you, please?

Q. Mr. Kalmus, where do you live? A. 723 Avenue X in Brooklyn.

Q. Where are you employed? A. Saks Fifth Avenue.

Q. How long have you been with Saks? A. About 28 years.

Q. Do you have a position at Saks? A. Yes.

Q. What is that, sir? A. I manage the bill adjustment office.

(828) The Court: Bill adjustment, is that it?

The Witness: Bill adjustment office.

Q. In your position as manager of the bill adjustment department do you have access to the records of Saks? A. I do.

Q. Are you familiar with such records? A. Yes.

Sam Kalmus—for Government—Direct

Q. Does Saks in the course of its business keep a ledger card for each customer with an account? A. Yes.

Q. And what does the ledger card show, generally? A. The ledger card shows a record of the transactions which occurred on a charge account, that is, all purchases, returns, payments and outstanding balances, if any.

Q. Approximately how long do you keep these ledger cards? A. We keep them for about five years.

Q. Are they destroyed then? A. That is right.

Q. Prior to their destruction is there any record kept of them, such as having them microfilmed? A. No, there is no record kept.

Q. Mr. Kalmus, have you brought with you certain ledger cards dealing with the accounts of Mr. Costello— A. Yes, I have.

Q. —and Mrs. Costello? A. Yes.

(Witness hands papers to Mr. Christy.)

(829) Mr. Christy: Mark this.

(Marked Government's Exhibit 227 for identification.)

Mr. Christy: And mark these with separate numbers.

The Court: Mark them A and B.

Mr. Christy: May I request that they be given a different number, as this one deals with one person and the other two deal with another?

The Court: They are all from Saks, aren't they?

Mr. Christy: From Saks.

The Witness: They are separate accounts.

The Court: They relate to one or the other?

The Witness: They are separate accounts.

Mr. Christy: They are separate accounts.

The Court: That is all right; mark them 227-A and 227-B.

(Marked Government's Exhibits 227-A and 227-B for identification.)

Q. Mr. Kalmus: I show your Government's Exhibits 227 and 227-A and 227-B, and I will ask you if you will tell us what Government's Exhibit 227 is? A. 227 is the ledger record or the charge account for Mrs. Frank Costello.

Q. What period does that cover? (830) A. This covers from 1948 through 1951, four years.

Q. It covers 1948 and 1949? A. That is right.

Q. Looking at Government's Exhibits 227-A and 227-B, will you tell us what they are? A. 227-A is the account for Mr. Frank Costello for the years 1948 and 1949 and 227-B is the account for Mr. Frank Costello for 1946 and 1947.

Q. The one that you have just identified covers a period going back more than five years, doesn't it? A. Yes.

Q. So apparently that was not destroyed in accordance with the policy of Saks? A. That is correct.

Q. Do you have any explanation for that? A. No, I don't have any explanation at all. It just happened to remain.

Q. Mr. Kalmus, in accordance with a request from the Treasury Department did you have prepared a transcript of the account of Mrs. Costello for the years 1946 and 1947? A. Yes.

Mr. Christy: 227-C.

(Marked Government's Exhibit 227-C for identification.)

Q. Mr. Kalmus, I show you Government's exhibit 227-C and I ask you if that is the transcript to which (831) you have just referred? A. Yes, that is correct.

Q. What is the date of that transcript? A. The date that it was prepared? April 29, 1951.

Q. Is that of the account of Mrs. Costello? A. That is right.

Q. What years does it cover? A. It covers 1946 and 1947.

Q. This is the transcript that was prepared from the ledger sheets? A. That is correct.

Q. Which have since been destroyed? A. That is right.

Q. Is this a true and accurate transcript? A. Yes, sir.

Q. The ledger cards, 227, 227-A and 227-B, are they records kept in the regular course of business? A. They are.

Q. Is it the regular course of Saks' business to keep such records? A. That is right.

Mr. Christy: Your Honor, at this time the Government offers Exhibits 227, 227-A, 227-B and 227-C in evidence.

We will offer in evidence only such part of the records that deal with the years '46, '7, '8 and '9 and nothing subsequent.

(832) The Court: Do you propose to substitute—

Mr. Christy: We will substitute photostats appropriately blocked out, your Honor.

The Court: You may do that.

(A pause.)

Mr. Fennelly: I object to Exhibits 227 and 227-C on the ground that they are irrelevant and immaterial.

The Court: Overruled.

Mr. Fennelly: On Exhibits 227-A and 227-B I would have no objection providing that certain

notations, which your Honor will see on here, are deleted.

The Court: Are you interested in those?

Mr. Christy: Mr. Fennelly, which ones do you refer to?

(Mr. Fennelly indicating.)

Mr. Christy: No, your Honor. I will have those deleted.

Mr. Fennelly: In fact, as to the amounts of payment, I have no—

The Court: Very well, the part you think ought to be eliminated will be eliminated, and they may be received.

Mr. Christy: I will have it blocked out on the (833) photostats.

The Court: All right.

(Government's Exhibits 227, 227-A, 227-B and 227-C for identification received in evidence.)

Q. Mr. Kalmus, referring to Government's Exhibits 227 and 227-C in evidence, would that give you an accurate account of Mrs. Costello's account for the period 1946 through 1949? A. Yes.

Q. It would, sir? A. It would.

Q. Referring to Government's Exhibits 227-A and 227-B, that would cover the period 1946 through 1949 also? A. That is correct.

Q. Now, Mr. Kalmus, on what day of the month are the bills posted at Saks? A. They are posted every day, as a matter of fact, but they work according to the alphabet, and the section of the alphabet in which Mr. Costello's name is contained is billed on the 6th of each month.